sold to pay the salary of the pastor is of interest to lawyers and ministers alike. So, too, is the little dissertation upon justice contained in the opinion of the court. After expressing the view that if any debt ought to be paid it is one contracted for the health of souls, and if any class of debtors ought to pay, the good people of a Christian church are of that class, the learned judge continues: "The study of justice for more than forty years has impressed me with the supreme importance of this grand and noble virtue. Some of the virtues are in the nature of moral luxuries, but this is an absolute necessity of social life. It is the hog and hominy, the bacon and beans, of morality, public and private. It is the exact virtue, being mathematical in its nature. Mercy, pity, charity, gratitude, magnanimity, etc., are the liberal virtues. They flourish partly in voluntary concessions made by the exact virtue, but they have no right to extort from it any unwilling concession. A man cannot give in charity, or from pity, hospitality, or magnanimity, the smallest part of what is necessary to enable him to satisfy the demands of justice. It is ignoble to indulge any of the liberal virtues by leaving undischarged any of these imperative demands against us. . . . We think a court may well constrain this church to do justice. In contemplation of law, justice is not only one of the cardinal virtues, it is the pontifical virtue."

THE LAW SCHOOL.

LECTURE NOTES.

[These notes were taken by students from lectures delivered as part of the regular course of instruction in the School. They represent, therefore, no carefully formulated statements of doctrine, but only such informal expressions of opinion as are usually put forward in the class-room. For the form of these notes the lecturers are not responsible.]

CONTRIBUTORY NEGLIGENCE. — CAUSATION. — (*From Professor Smith's Lectures.*) — The expression "contributory" negligence is inaccurate and misleading. It suggests that a penalty attaches to a man's failure to exercise due care in his own behalf. Such, however, is by no means the case. No one owes to himself a duty of care, and a penalty can only attach where there has been a breach of duty. Further, negligence may be contributory in any one of several ways. 1. It may be contributory in the sense of being an element in the chain of antecedents of which the injury complained of is the consequent. 2. It may be contributory in the sense of operating simultaneously and concurrently with the defendant's negligence to produce the injury complained of. 3. It may be contributory in the sense of calling into actual existence the cause itself of the injury. It is in this last sense that it is generally used and understood in the law. But "causative" or "decisive" negligence would much better express the meaning of the doctrine. As Mr. Beven, in his work on Negligence, says, contributory negligence is really only a special application of the law of negligence. What he really means is, that contributory negligence is only a special application of the doctrine of causation. "The true ground of contributory negligence being a bar to recovery is that it is the proximate cause of the mischief" (Pollock on Torts, 2d

edition, 401). The doctrine of legal cause has itself been the subject of much discussion, and there is still some diversity of opinion on the question. There are, in general, to be found in the books three theories of causation. 1. The doctrine that the defendant is liable if the injury would not have happened but for his acts. This view, however, is clearly wrong. It involves a too extended liability, for it takes no account of any possible intervening responsible agent or efficient cause. 2. The doctrine that the defendant is liable only for such consequences as a reasonable man would have foreseen. This view is as much too narrow as the former was too broad. Where a man has been guilty of a wilful wrong act, he is liable for all the consequences which result from that act, whether he foresaw them or not. Liability attaches to a negligent act only when damage ensues. But when damage does ensue, the act itself becomes wrongful, and no good reason can be given why liability for damage should be limited to "reasonable and probable" consequences, and not be extended to *all* consequences which actually do result from the act without the intervention of any responsible agent or efficient cause. 3. The doctrine which attaches the liability to the last human wrongdoer in the chain of antecedents, and holds him responsible for all the consequences of his act, within the limits suggested by Mr. Bishop in his work on Non-Contract Law, where the act may so far have spent its force that it may no longer reasonably be considered as the responsible cause of any result. This last is the sounder view on principle. *In jure non remota causa sed proxima spectatur.*" What was the proximate cause, whether the act of the defendant was the proximate cause of the injury, are questions of fact to be settled by the jury, under proper instruction from the court. Apply this now to the question under consideration. In contributory negligence, the plaintiff's fault and the defendant's fault are both among the antecedents in the chain of causation. In general, no liability in tort attaches to mere "sins of omission," unless some prior act of the party, in creating a situation dangerous to others, has imposed upon him a duty of action. The plaintiff's fault, then, must either (1) precede, (2) be concurrent with, or (3) follow the defendant's wrongful act. If the plaintiff's fault preceded the defendant's wrongful act, then the defendant was the last responsible human wrongdoer, and the defendant is liable because his act was (and the plaintiff's was not) the responsible legal cause of the damage. If the plaintiff's wrongful act and the defendant's wrongful act are simultaneous and concurrent, the plaintiff cannot recover, because his own act is part of the responsible legal cause of the damage. If the plaintiff's wrongful act follows the defendant's wrongful act, then, as the plaintiff is the last responsible human wrong-doer, he will be barred from recovery; and this not because his wrongful act "contributed" with the defendant's act to produce the damage, but because his own act was the sole responsible legal cause of the damage. In order, however, to bar the plaintiff, his act must be both a responsible act — that is, one not induced by the previous wrongful act of the defendant — and also one tending to produce the injury complained of. This theory would seem to offer a simpler and more satisfactory solution of the vexed question of "contributory negligence" than do any of the other prevalent doctrines. If it be objected that this theory fails to meet the difficulty raised by "continuing negligence," it may be answered that no other theory meets the difficulty, while under this theory at least a partial solution may be offered. Where the plaintiff's negligence

is continuing at the time of the injury suffered, it is so in one of two ways: it is either concurrent with that of the defendant as an active cause in producing the result — in which case the plaintiff will be barred; or it is continuing in the sense of being a condition of the dangerous situation — in which case the defendant's act will be considered as the legal cause of the injury, and the plaintiff will not be barred. The negligence of the plaintiff does not absolve the defendant from his duty of care. In the language of Carpenter, J., in *Company* v. *Railroad*, 62 N. H. 164: "If due care on the part of either at the time of the injury would prevent it, the antecedent negligence of one or both parties is immaterial, except it may be as one of the circumstances by which the requisite measure of care is to be determined. In such a case the law deals with their behavior in the situation in which it finds them at the time the mischief is done, regardless of their prior misconduct. The latter is *incuria*, but not *incuria dans locum injuriae* — it is the cause of the danger; the former is the cause of the injury." It is not claimed that this test — namely, fixing the liability on the last human wrong-doer — will reconcile all authorities, yet it is claimed that it will reconcile more than any other test suggested.

RECENT CASES.

[These cases are selected from the current English and American decisions not yet regularly reported, for the purpose of giving the latest and most progressive work of the court. No pains are spared in selecting *all* the cases, comparatively few in number, which disclose the general progress and tendencies of the law. When such cases are particularly suggestive, comments and references are added, if practicable.]

AGENCY — EMPLOYER'S LIABILITY ACT — CONTRACT IN CONTRAVENTION OF. — Code Ala. § 2590, subd. 5, makes an employer liable to an employee for personal injuries resulting from the negligence of any person in the employer's service, who has charge or control of any engine, car, or train upon a railroad. *Held*, that a provision in a contract between a railroad company and a switchman, whereby the regular wages paid the latter were to cover all risks and liability to accident from every cause, and the right to damages was not to be recognized, was "in contravention of the statutory provisions, opposed to public policy," and void. *Hissong* v. *Richmond & D. R. Co.*, 8 So. Rep. 776 (Ala.).

An opposite view of such a contract was taken in England, *Griffiths* v. *Earl of Dudley*, L. R. 9 Q. B. Div. 357. But see *Baddeley* v. *Earl of Granville*, L. R. 19 Q. B. Div. 423. In this country, in those States where it is not settled by statute, both views find support.

AGENCY — INTOXICATING LIQUORS — SALE BY AGENT. — One who unlawfully sells liquor, as clerk or agent for a wholesale liquor-dealer, without a license, may be convicted of carrying on the business of a wholesale liquor-dealer without a license, though he has no pecuniary interest other than as agent or clerk. *Abel* v. *State*, 8 So. Rep. 760 (Ala.).

BILLS AND NOTES. — One S obtained by fraud a United States postal money-order payable to A or order. He forged the indorsement of A upon it, and obtained payment from the post-office, in the form of a check payable to A or order, drawn by the United States upon the defendant bank. The post-office clerk was not negligent in paying S, as the latter had fraudulently contrived to get several reputable persons to identify him as A. S took the check to the defendant bank, indorsed it in the name of A, was identified by the same persons as before, and received payment. The United States, on discovery of the fraud, paid the amount of the order to A, and brought action against the bank for the money paid by it upon the check. *Held*, that the plaintiff could not